

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
Plaintiff, :
v. :
VILLAGE OF AMITYVILLE AND :
THE AMITYVILLE FIRE DEPARTMENT :
Defendants. :

x CIVIL ACTION NO.
2:09-03742 ADS/AKT
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ FEB 15 2011 ★
LONG ISLAND OFFICE

CONSENT DECREE

This action was filed on August 28, 2009 by Plaintiff United States Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government, to correct unlawful employment practices based on age and provide appropriate relief to Edwin Lawrence and other volunteer firefighters who were adversely affected by such practices. The EEOC alleged that Defendants Village of Amityville and the Amityville Fire Department ("Defendants") discriminated against Edwin Lawrence and other similarly situated volunteer firefighters, age 65 and older, by not allowing them to accrue credit towards a length of service award because of their age, in violation of the Age Discrimination in Employment Act of 1967, as amended ("ADEA").

EEOC and Defendants (hereinafter "the parties") desire to resolve the matter without further litigation and adjudication. The parties therefore do hereby stipulate and consent to the entry of this Consent Decree as final and binding between the EEOC, Defendants, and their successors or assigns.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

1. The parties agree and the Court finds that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met. This Decree is being issued with the consent of the parties. No party will contest the validity of this Consent Decree or the jurisdiction of the Federal District Court to enforce this Consent Decree and its terms.

2. This Consent Decree is final and binding between the EEOC and Defendants, and resolves all claims in EEOC's Complaint in Civil Action No. 2:09-03742, filed in the United States District Court for the Eastern District of New York and the underlying EEOC Charge No. 846-2009-27906, without any admission of liability by the Defendants.

3. This Consent Decree in no way affects EEOC's right to process any pending or future charges that may be filed against Defendants, and to commence civil actions on any such charges.

4. The firefighters who are entitled to payment are those members of the Amityville Fire Department at any time between January 1, 1993 and the present who, but for the age limitation in effect during 1992 to 2005, inclusive, would have received credit for 1 or more years of additional firefighting service (the "Claimant Class"). The Claimant Class is set forth in Exhibit A, which also shows the years that the firefighters would have earned firefighting service except for the age limitation, the total number of years of firefighting service not awarded due to the age limitation, and the settlement amounts to be paid each firefighter.

5. Each firefighter in the Claimant Class, including deceased firefighters, who receive this additional firefighting service is entitled to a retroactive payment of the difference between the length of service award previously received and the length of service award the firefighter should have received had the additional firefighting service been included in calculating the service award. All living members of the Claimant Class who receive this additional service credit will also prospectively receive an increased length of service award based on total years of firefighting service which is also set forth in Exhibit A.

6. Within 30 days after the entry of this Consent Decree, Defendants will credit each firefighter identified in Exhibit A with the years of firefighting service set forth in Exhibit A and commence payment consistent with the length of service award of each such firefighter based on inclusion of the additional firefighting service.

7. Defendants will pay a total of \$209,280.00 to resolve this action. This amount represents the retroactive benefits due the claimants through December 31, 2011. Defendant Village of Amityville will contribute this amount to the LOSAP fund and the payments will be made by check from the LOSAP fund made payable to each claimant according to the schedule set forth in Exhibit A. For each check, Defendant Village of Amityville will issue an IRS form 1099 and make appropriate tax withholdings, and will provide copies of the checks and 1099 forms to Adela Santos, by email to adela.santos@eeoc.gov or by facsimile to 212-336-3623, contemporaneously with the issuance of each check.

8. Starting on March 1, 2011 Defendants will provide increased monthly payment amounts to each living member of the Claimant Class in the amounts set forth and consistent with the revised entitlement years set forth in Exhibit A.

9. The estates of the deceased members of the Claimant Class who receive additional service credit pursuant to this Consent Decree will receive one lump sum payment in the amounts set forth and consistent with the schedule set forth in Exhibit A.

10. Defendants and their managers, officers, agents, successors and assigns acknowledge that the Amityville LOSAP is subject to the requirements of the ADEA and that they will comply with such requirements in the future administration of such program.

11. Defendants and their managers, officers, agents, successors and assigns are permanently enjoined from preventing active volunteer firefighters from receiving service award credit in the Amityville LOSAP because of their age to the extent required by the ADEA and any other applicable federal or state law.

12. Defendants and their managers, officers, agents, successors and assigns are enjoined from retaliating against Edwin Lawrence and/or any other individual for asserting his or her rights under the ADEA, or for engaging in protected activity, including participating in this matter, giving testimony, or assisting the EEOC in any way.

13. No later than 7 days after the entry of this Consent Decree, Defendants will post, at their respective offices, departments, and/or stations, a copy of a notice in the form attached hereto as Exhibit B, which will remain posted for the length of this Consent Decree.

14. No later than 7 days after the entry of this Consent Decree, Defendants will post, at their respective offices, departments, and/or fire stations, the "Equal Employment is the Law" poster available to order through EEOC's public webpage at www.eeoc.gov.

15. No later than 7 days after the entry of this Consent Decree, Defendants will adopt and implement anti-discrimination policies and procedures for the firefighters of the Village of

Amityville and Amityville Fire Department that address all statutes enforced by the EEOC. A copy of the policies and procedures is attached hereto as Exhibit C.

16. No later than 90 days after the entry of this Consent Decree and annually thereafter, Defendants will provide a minimum of 1 hour of training on the requirements of the ADEA, including as applied to retirement benefit programs, to all active volunteer firefighters and to the Village Administrator, Village Treasurer, Fire Chief, Assistant Fire Chiefs, and members of the Fire Council. The training will be conducted by Joseph Frank or Salvatore Sapienza of Sapienza & Frank. The training is mandatory for the Village Administrator, Village Treasurer, Fire Chief, Assistant Fire Chiefs, and members of the Fire Council. Defendant Amityville Fire Department will grant LOSAP points to all active volunteer firefighters who attend these training sessions in accordance with General Municipal Law Section 217.

17. With the exception of Paragraph 11 which is a permanent injunction, this Decree will remain in effect for 5 years from the date of entry. This case may be administratively closed but will not be dismissed. The Court retains jurisdiction to enforce the decree. The Decree will expire by its own terms at the end of that period, without further action required by the parties or the Court, unless the duration of this Decree has been extended.

18. Each of the parties to this Consent Decree will bear its respective costs and attorneys' fees in this matter.

ENTERED AND ORDERED this 15th day of February 2011. *Case Closed*

HONORABLE J. SPATT
UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: 2/10/11



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FOR DEFENDANTS VILLAGE OF
AMITYVILLE AND AMITYVILLE
FIRE DEPARTMENT

Dated: 2/7/11



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